

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building, 4<sup>TH</sup> Floor  
Des Moines, Iowa 50319  
eab.iowa.gov**

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**SUSAN A WOODS**

Claimant

: **APPEAL NUMBER:** 22B-UI-12852

: **ALJ HEARING NUMBER:** 22A-UI-12852

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: **EMPLOYMENT APPEAL BOARD  
DECISION**

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**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.3-7**

**DECISION**

The Claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION IN THE CLAIMANT'S FAVOR**:

The Administrative Law Judge's discussion of the recovery of overpaid benefits is modified to be consistent with the following discussion:

*Regular Benefit Overpayment Adjusted*

First of all the Claimant was disqualified for regular benefits in a final decision issued by Administrative Law Judge Callahan in case 21A-UI-06566-SC-T on June 8 of 2021. It is too late to challenge that ruling, and so counsel's argument to the contrary cannot change anything. *Kash v. Iowa Dept. of Employment Services, Div. of Job Service*, 476 N.W.2d 82 (Iowa 1991); *Hensley v. Iowa Dept. of Job Service*, 336 N.W.2d 448 (Iowa 1983); *Walker v. Iowa Dept. of Job Service*, 351 N.W.2d 802 (Iowa 1984); 486 IAC 3.3(6).

Second, of course an overpayment decision need not be initiated by the Employer. The issue of the timeliness of the Employer protest of allowing benefits was resolved, in the Employer's favor, over a year ago. Once a Claimant is disqualified then the overpayment issue is a separate issue, and since the money paid out is taxpayer money, and the fund paid out of is administered by the government, it is the government that determines an overpayment.

Although the Claimant requests a waiver of her overpayment of regular state benefits, we have no legal basis for doing so. Back in the 1970's things were briefly different. But a lot of water has gone under the bridge in the decades since.

In *Galvin v. Iowa Beef Proc.*, 261 N.W.2d 701 (1978) the Iowa Court cast doubt on anyone having to pay back benefits received in good faith while an appeal was pending. Shortly after *Galvin* the legislature made express that overpayments are to be recovered "unless the recovery would be contrary to equity or good conscience." 67 G.A. ch. 1059, §3. According to the Iowa Supreme Court this amendment was "enacted in response to *Galvin*" and "might well" alter *Galvin* even with excusing only good faith overpayments. *Hiserote Homes, Inc. v. Riedemann*, 277 N.W.2d 911, 915 (Iowa 1979). But the statutory good faith exception prevailed for but a single year. In 1979 the good faith provision was struck and the first unnumbered paragraph (now letter "a") made to read simply that "the benefits shall be recovered." Iowa Code §96.3(7)(2021) *as amended* by 68 G.A. ch 33, §§1-5. What the legislature did over 40 years ago was strike "unless the recovery would be contrary to equity or good conscience." The provision now reads:

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, **even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered.**

Iowa Code §96.3(7)(a)(2021). *Galvin* has been statutorily reversed for many years. As more recently explained by the Iowa Court of Appeals, "[t]his provision **requires** repayment notwithstanding [a Claimant]'s lack of fault in incurring the overpayment." *Powell v. Employment Appeal Bd.*, 861 NW 2d 279, 281 (Iowa 2014) (emphasis added).

Thus in *Sievertsen v. Employment Appeal Board*, 483 N.W.2d 818 (Iowa 1992) a claimant needed to satisfy the \$250 earnings requirement to be eligible for benefits in a second benefit year. "Claimant endeavored to obtain the required \$250 in covered wages through employment at Marycrest College as a carpenter. At the time, he was a full-time student at Marycrest. The record reflects that claimant specifically asked DES representatives whether this employment would serve to qualify him for continued unemployment eligibility and was given the assurance that it would." *Sievertsen* at 819. After Mr. Sievertsen had collected benefits with the imprimatur of the agency the agency realized it had made an error of law. Then Mr. Sievertsen was then socked with an overpayment. The Supreme Court concluded that, despite the error a by the agency and the fact that the claimant had been pre-approved to apply for benefits, there was no basis for preventing recovery of the overpayment. The Court specifically rejected the notion that the agency could be estopped. The Court cited to Iowa Code §96.3(7), and found "[w]e believe that the authorities cited preclude a finding that the Department of Employment Services is estopped from recouping the payments made to the claimant for which he was ineligible under the controlling regulations." *Sievertsen* at 819.

In *Bailey v. Employment Appeal Board*, 518 N.W.2d 369 (Iowa 1994) the Court was confronted with Public Law 102-64 (1991), the Emergency Unemployment Compensation Act of 1991. That federal emergency benefits law had a repayment provision allowing the states to waive overpayment of emergency benefits if they wished (it was identical to the ones now in force for the federal benefits of PUA, PEUC, FPUC, and LWA). The Iowa Supreme Court pointed out that “while the federal statute quoted above provides that a state may waive repayment, Iowa has elected not to do so.” *Bailey*, 518 N.W.2d at 370. The Court noted that “the only discretion on the part of the agency is to give the recipient more repayment flexibility if the overpayment was made by error, as opposed to misrepresentation” but that “[i]n either case, the benefits must be repaid.” *Bailey* at 370. The presence of good faith, the availability of waiver of federal overpayments, and the lack of fraud simply are not enough to negate the fact that the Claimant must pay back her state benefit overpayment.

So the Code states that the overpaid “benefits shall be recovered” and, of course, recovery is done by the agency that paid them out. The very next statutory sentence says “The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.” Iowa Code §96.3(7)(a). And, of course, IWD’s overpayment regulations also refer only to the agency being the one to determine and collect an overpayment. 871 IAC 25.8(1)(“ the department shall recover the overpayment of benefits”). And this is why – not to beat a dead horse – it is IWD that has the authority to purge uncollectable overpayments after ten years. Iowa Code §96.11(13). Private parties play zero role in the determination and collection of this public debt.

As for the amount of the overpayment, the Claimant is correct that the amount of the overpayment may be challenged at this stage. *Hensley v. Iowa Dept. of Job Service*, 336 N.W.2d 448, 452 (Iowa 1983) *accord Walker v. Iowa Dept. of Job Service*, 351 N.W.2d 802 (Iowa 1984). The Claimant was disqualified in case 21A-UI-06566-SC-T under a between academic years theory, and so was denied, as set out in that decision, effective May 24, 2020 until the summer break was over and the following school year started. Agency records show that between 5/24/20 and 8/15/20 the Claimant collected \$1,150 **not** \$1,164. We adjust her overpayment of regular benefits downward to \$1,150.

#### *FPUC Overpayment Waived*

The CARES Act, as amended, provides:

In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency, **except** that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience

PL116-136, Sec. 2104(f)(2). In this case the Claimant was paid FPUC in addition to regular state benefits. We now consider whether the FPUC overpayment can be waived.

In deciding the question of fault, we will consider factors such as whether a material statement or representation was made by the Claimant in connection with the application for benefits, whether the Claimant knew or should have known that a fact was material and failed to disclose it, whether the Claimant should have known the Claimant was not eligible for benefits, and whether the overpayment was otherwise directly caused by the knowing actions of the Claimant. Cf. 871 IAC 24.50(7) (setting out factors for similar issue under TEUC from 2002). In deciding equity and good conscience we utilize the federal directives by considering the following:

- It would cause financial hardship to the person for whom it is sought; or
- The recipient of the overpayment can show (regardless of their financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either they have relinquished a valuable right or changed positions for the worse; or
- Recovery would be unconscionable under the circumstances.

*UIPL 20-21 p. 6-7 (DOL ETA 5/5/2021).*

Applying these factors to the totality of the circumstances in this case including that there is no evidence of material misrepresentation, we find on this individualized basis that the **FPUC overpayment** should be waived on the ground that the Claimant's knowing actions were not directly at fault for the overpayment, and recovery would be unconscionable.

The Employer should note that the Employer will not be charged for any waived FPUC.

If after today the Claimant should receive an overpayment decision concerning the overpayment(s) we have waived then the Claimant should appeal that decision. The Claimant should retain our decision to present to IWD in response to any such decision. The Claimant likewise should present this order to IWD if the Claimant should receive a bill for a waived overpayment.

#### **DECISION:**

The decision of the Administrative Law Judge dated September 12, 2022 is **AFFIRMED AS MODIFIED IN THE CLAIMANT'S FAVOR.**

**The overpayment of \$5,400 in FPUC benefits is hereby waived, and the Claimant has no obligation to pay back those benefits. This waiver is effective only if the Claimant does not receive additional payments of FPUC covering the same weeks.** If the Claimant does receive such additional payments covering the same period of time as this case, then Claimant will not be allowed to retain the double payment.

The regular benefit overpayment is reduced to reflect the actual payout of benefits. She is only overpaid \$1,150, not \$1,164, in *regular* state benefits.

In all other respects the decision of the Administrative Law Judge is affirmed.

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James M. Strohman

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Ashley R. Koopmans

**DISSENTING OPINION OF MYRON R. LINN:**

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would affirm the decision of the administrative law judge without modification.

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Myron R. Linn

RRA/fnv